

We have a great opportunity before us. I wish to share with my colleagues that the conference is going well and sometime after we come back from the recess, we will have a bill to bring back to this body.

Mr. REID. Will the Senator yield?

Mr. FRIST. Yes.

Mr. REID. Mr. President, I say not only did President Johnson sign that extraordinary bill—38 years ago?

Mr. FRIST. Yes, 1965; 38 years ago.

Mr. REID. As soon as he signed the bill, Congress went out of session. That was a good example.

Mr. FRIST. Well said.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

ENERGY POLICY ACT OF 2003

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 14, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 14) to enhance the energy security of the United States, and for other purposes.

Pending:

Campbell amendment No. 886, to replace "tribal consortia" with "tribal energy resource development organizations".

Durbin modified amendment No. 1385, to amend the Internal Revenue Code of 1986 to provide additional tax incentives for enhancing motor vehicle fuel efficiency.

Domenici amendment No. 1412, to reform certain electricity laws.

Bingaman amendment No. 1413 (to amendment No. 1412), to strengthen the Federal Energy Regulatory Commission's authority to review public utility mergers.

Bingaman amendment No. 1418 (to amendment No. 1412), to preserve the Federal Energy Regulatory Commission's authority to protect the public interest prior to July 1, 2005.

The ACTING PRESIDENT pro tempore. Under the previous order, there shall be up to 2½ hours of debate on the amendment to be offered by the Senator from Washington, Ms. CANTWELL, with 30 minutes under the control of the chairman, and 2 hours under the control of the Senator from Washington. The Senator from Washington.

AMENDMENT NO. 1419 TO AMENDMENT NO. 1412

(Purpose: To prohibit market manipulation)

Ms. CANTWELL. Mr. President, I call up amendment No. 1419.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

The Senator from Washington [Ms. CANTWELL], for herself, Mr. BINGAMAN, Mrs. FEINSTEIN, Mr. HOLLINGS, Mr. WYDEN, Mrs. BOXER, and Mrs. MURRAY, proposes an amendment numbered 1419 to amendment No. 1412:

Strike section 1172 and insert the following:

SEC. 1172. MARKET MANIPULATION.

(a) PROHIBITION.—Part II of the Federal Power Act (as amended by section 1171) is amended by adding at the end the following:

"SEC. 219. PROHIBITION ON MARKET MANIPULATION.

"It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, any manipulative or deceptive device or contrivance in contravention of such regulations as the Commission may promulgate as appropriate in the public interest or for the protection of electric ratepayers."

(b) RATES RESULTING FROM MARKET MANIPULATION.—Section 205(a) of the Federal Power Act (16 U.S.C. 824d(a)) is amended by inserting after "not just and reasonable" the following: "or that result from a manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219".

(c) ADDITIONAL REMEDY FOR MARKET MANIPULATION.—Section 206 of the Federal Power Act (16 U.S.C. 824e) is amended by adding at the end the following:

"(e) REMEDY FOR MARKET MANIPULATION.—If the Commission finds that a public utility has knowingly employed any manipulative or deceptive device or contrivance in violation of a regulation promulgated under section 219, the Commission shall, in addition to any other remedy available under this Act, revoke the authority of the public utility to charge market-based rates."

Ms. CANTWELL. Mr. President, I thank the clerk for reading this amendment, particularly at such an early hour of the morning. The reading of the amendment by the clerk shows exactly what we are up to this morning; that this is a simple amendment and a simple action we are asking the Senate to take. We are simply saying market manipulation under the Federal Power Act cannot be just and reasonable, and market manipulation should be found, under the Federal Power Act, by the Federal Energy Regulatory Commission, to be a wrongful act.

It did not take long to read that amendment but, as I said to this body last night, the fact that such law is not currently on the books has caused the ratepayers in my State great harm. It has caused ratepayers in Snohomish County, where I happen to live, a 54-percent rate increase. It has caused ratepayers in King County a 61-percent rate increase. It has caused ratepayers in Vancouver, WA, and businesses in Vancouver, WA, that can easily move to other parts of the country, an 88-percent increase. In eastern Washington, the part of the State hardest hit economically, where jobs are few and farmers struggle, it has caused ratepayers a 71-percent rate increase.

We are not talking about a rate increase that is just for 1 year. We are talking about long-term Enron contracts that were manipulated—knowingly manipulated—and my ratepayers are stuck paying those contracts for the next 5, 6, and 7 years without relief.

We are here today to say one thing and be clear about it: This kind of manipulation that gouges ratepayers should be prohibited. This body should be clear. We should be unequivocal. We should say, as other entities have said, that this kind of manipulation is wrong and needs to be corrected.

I have a lot to say on this amendment this morning, but I know I am going to be joined by many of my colleagues from the West who have had their economies wrecked by gouging and illegal practices. I want to give them an opportunity to say something, too, because I think the face of the west coast economy and what it has meant for ratepayers needs to be clear.

We are trying to say with the Cantwell-Bingaman amendment that we do not want to see this kind of action happen on natural gas prices in other parts of the country. We do not want to see this take place 4 months from now, or 2 years from now.

Let's be really clear. These kinds of practices that were deployed by Enron, the various schemes of Fat Boy, Ricochet, Megawatt Laundering, and Load Shift are illegal.

I will yield 10 minutes to my colleague from Washington State, Mrs. MURRAY, who knows all too well that this crisis has caused real hardship in our State. She has been outspoken on this issue as well and sent many letters to various entities, including the Federal Regulatory Energy Commission, talking about how we need to make changes.

I yield her 10 minutes this morning to talk about some of the impacts she has seen firsthand.

The ACTING PRESIDENT pro tempore. The Senator from Washington, Mrs. MURRAY.

Mrs. MURRAY. Mr. President, I rise today to support the amendment that has been offered by my colleague from Washington State, Ms. CANTWELL, that will help protect our consumers from this electricity market manipulation.

I begin by thanking Senator CANTWELL for her tremendous work on the energy commitment and her long-time work on trying to make sure consumers in my home State of Washington finally receive the attention and the help they need from us at the Federal level because of the gouging that has gone on in this market manipulation. We have seen the dramatic impacts that she has so eloquently talked about.

I thank her for speaking out on behalf of our Pacific Northwest consumers who are hurting. We have had the first, second, or the third highest unemployment rate for almost 2½ years, much of that precipitated by the fact of the energy spike costs that have hit the west coast, causing many of our cold storage companies, the aluminum industry, to shut down. They are laying people off. The effects of that reverberated throughout our economy, as other industries were hurt. Even our schools were hurt as they had to lay off teachers in order to pay energy bills.

It has had a tremendous impact on our economy and continues to do so. Bringing this amendment to the Senate floor today is absolutely critical. If we are going to have an electricity title, and if we do not deal with what happened in market manipulation, we are only going to see this continue.

We have a responsibility at the Federal level to protect our consumers at home. In fact, that is the responsibility of the Federal Regulatory Energy Commission. This amendment is so critical to making sure that we can go home and tell our consumers we are doing the right job of protecting them and the market manipulations that have occurred in the past will not occur again. Without this amendment, we will not have the ability to say that.

As Senator CANTWELL stated, all of us on the west coast remember the energy crisis of 2001. Our consumers and our businesses were hit with massive increases in the cost of energy. In California, they saw shortages and brownouts that were incredible. In Washington State we have felt the impact in every sector of our economy and in every home in our State. In fact, as I will talk about in a moment, we in Washington State are continuing to be penalized for the failures in the energy market and failures by our Federal energy regulators.

There were certainly many causes for the energy crisis that hit us, but the most disturbing is the fact that energy companies manipulated the marketplace specifically to take advantage of the customers. As we saw throughout that crisis, the Federal Regulatory Energy Commission did not take aggressive action to protect consumers from market manipulation. The amendment that has been offered by my colleague, Senator CANTWELL, will direct FERC, the Federal Energy Regulatory Commission, to revoke those market-based rate authority companies that have been found to knowingly engage in electricity market manipulation.

Our experience on the west coast shows why this amendment is so important and why FERC needs to be better policed in the energy market. For more than 2 years, many of us in the northwest delegation have been urging FERC to better protect our consumers. In fact, way back in March and April of 2001 and again in May of 2002, I sent letters to FERC calling for relief from this energy crisis. I asked for Federal price caps to stabilize the market. I asked for Washington State utilities to receive refunds, as California utilities received, and I urged FERC to report criminal activity to the Department of Justice.

Finally, on March 26 of 2003, FERC found that market manipulation occurred during the 2001 west coast energy crisis. Unfortunately, FERC indicated it was highly unlikely that Washington State ratepayers would be reimbursed for the harm that was caused by that market manipulation. That is really unfair when we look at what happened throughout that crisis.

At the height of the 2001 energy crisis, when Enron and others were manipulating the system, FERC was urging companies to enter into long-term contracts. Many of our utilities in the Pacific Northwest followed their request and entered into long-term contracts at highly inflated rates.

According to the Seattle Times, during the energy crisis the Northwest wholesale market averaged \$276 per megawatt hour. That is 16 percent higher than the average prices in northern California, and 28 percent higher than in southern California. So it was really disturbing to all of us to see FERC agree that there was manipulation but then leave Washington State ratepayers holding the bag with no relief for the harm they experienced and continue to experience because of these contracts.

Clearly, FERC needs to be more aggressive in protecting our consumers. It needs to uncover and it needs to report market manipulation much earlier. It needs to have the authority to take action against companies that defraud the public and defraud the people in our States by manipulating the electricity market. The amendment that Senator CANTWELL has offered will direct FERC to take aggressive action against predatory energy companies that manipulate the market, and I strongly urge my colleagues to support this amendment.

This amendment will improve the underlying bill. It is extremely important. We need to have this kind of confidence if we want to see our ratepayers able to survive in the coming years.

I do have a lot of other concerns about the Energy bill and about an effort by Federal energy regulators. As my colleagues know, FERC is now pushing what they call a standard market design which would set uniform national standards for operating regional transmission grids, transmission grids that allow energy to be passed back and forth between communities that are in each region and their wholesale energy markets. Unfortunately, what FERC does not understand, what the bill does not understand, is that a one-size-fits-all solution is not going to fit the unique needs of the Pacific Northwest.

In New England, if they want to increase or decrease energy production, they burn more gas or more coal. They can regulate that industry. But in the Northwest, we cannot make it rain more or less based on some kind of profit schedule. Standard market design does not work in the Pacific Northwest. We cannot run our system that way because it is not designed to meet all of the needs we have. It means more opportunities for market manipulation and price gouging by big out-of-State energy companies.

As we have already talked about, we know FERC has already failed to protect Washington ratepayers from market manipulation. Given that, I think it is particularly unwise to allow FERC to take authority away from our State regulators through this standard market design and other proposals that are floating around through Congress and in this bill.

I am also very concerned that the Energy bill repeals the Public Utility

Holding Company Act of 1935 which restricts utility ownership.

Although Senator DOMENICI's substitute electricity amendment—which we have just gotten, we are reviewing, and is now in this bill—does include some remedies to protect consumers, it does not go far enough. Just look at the devastating effects of the 2001 energy crisis to see we have to do more to protect our consumers. It is our utmost responsibility. I am concerned the electricity title in this bill fails to do that.

It is clear this Energy bill we are debating does not do enough to protect consumers against market manipulation and could actually facilitate more opportunities for manipulation. As currently written, it does not provide enough remedies to help our consumers who have been victimized by market manipulation.

That is why I am in the Senate today to support my colleague from Washington State, Senator CANTWELL, and the amendment she has offered. We have the utmost responsibility to assure market manipulation is not going to continue again. We know the effects in the Pacific Northwest. Senator CANTWELL has outlined the average rate increases that have hit our State because of market manipulation. Energy price increases affect every sector of our economy. They affect every person in our State. They affect everything from how we can operate our schools, how many teachers we can have versus how many energy bills our schools have to pay, to whether potential new homeowners can afford a home. A 51 percent rate increase means we have more families in the State of Washington who cannot afford to buy new cars, new refrigerators. That affects our economy in the Pacific Northwest and has a rippling effect to our businesses, which have laid off thousands of employees because they cannot afford to pay their increased electricity costs.

The market manipulation amendment of Senator CANTWELL is an absolutely critical amendment to assure we can protect our consumers in the future. Failing to pass it is a failure of the responsibility we have as Senators. I urge its passage.

I thank my colleague for yielding on this critical matter.

Ms. CANTWELL. I thank Senator MURRAY for her articulate capsulization of what this Energy bill and the Domenici title means to the Northwest.

The Senator has hit it right on the head, in that market manipulation has not been adequately dealt with in this legislation. Not only has there been no strong stand against market manipulation, there are further attempts toward deregulation with standard market design and regional transmission organizations that we in the Northwest find ludicrous.

I ask unanimous consent to have printed in the RECORD a Seattle Post

Intelligence editorial from this morning's newspaper saying that the dubious Energy bill might be better shelved.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Seattle Post-Intelligencer, July 30, 2003]

DUBIOUS ENERGY BILL BETTER SHELVED

Republicans hope to drive the Senate toward a new energy bill this week. We all know what happens when you drive too fast; caution is lost in the rush to judgment.

For both the Northwest and the nation, the bill contains at least a trio of contenders for worst idea of the year—more deregulation of electricity, nuclear power subsidies and a new look at offshore oil drilling.

The West Coast is still trying to recover from cost increases created by deregulation schemes and market manipulation. Loan guarantees for nuclear reactors and a permanent cap on liability from accidents could increase radioactive waste—as if Hanford didn't have enough now. And, the idea of putting oil drilling platforms on more of the nation's coast was rejected decades ago.

The plan would also tilt relicensing of hydroelectric dams in favor of industry-designed environmental provisions. Don't expect that to help salmon runs.

Senators have a host of ideas for improving the bill: better vehicle mileage rules, new global warming standards and more incentives for renewable energy sources. The White House has intervened to try to move the bill forward, but senators must recognize they are starting from a tough spot. The existing bill is tainted because its roots are in closed-door meetings between Vice President Dick Cheney and his energy industry pals.

That kind of abuse during the Clinton administration killed health care reform. If senators hope to rescue the energy plan from its dubious origins, they had better plan on months of work.

Ms. CANTWELL. I thank my colleague for her diligence in expressing her opinion on this issue.

The RTO and standard market design issues she mentioned this morning show how unsound this idea is, not only in not protecting us from market manipulation but saying in a conceptual scheme, let's have a nationwide regional energy grid and let the people who will pay the most; that is, the power source that is willing to pay the most to get on to the grid, let them decide how power will be distributed.

For people in the Northwest, if we had power produced at cost-based rates; that is, cost plus what it takes to deliver to consumers—but all of a sudden FERC is pushing a concept of standard market design and saying, Enron or Reliance has more expensive power, we will shove it on to your grid and you pay that higher rate. As Senator MURRAY adequately pointed out, this is not a plan we endorse.

Some of my colleagues from the South also have concerns. Not only does this bill not do enough in protecting manipulation, it creates the possibility for more loopholes, more havoc, more chaos. Frankly, this is exactly how California got in trouble. Regarding a lot of market-based deregulation of the industry, everyone thought it would be competitive practices by

which the cost of electricity would be driven down. This is not like something one can afford to have the price go up.

One county, Snohomish County, had a 54 percent rate increase. We had printed in the RECORD yesterday an article from the New York Times that Snohomish County has a 44 percent increase. Consumers got disconnected from their electricity because they could not afford to pay. This is not one of these schemes when the "free market" does not drive down the price of a utility and ratepayers have something to do. They cannot go over to Nordstrom's and buy a cheap electricity contract and get electricity. They cannot go over to Wal-Mart and buy affordable electricity. They are stuck with these rates. They are stuck with the 54 percent increase and they will be stuck for years ahead. We had a 44 percent disconnect rate in that county.

Mrs. BOXER. Will the Senator yield?

Ms. CANTWELL. I yield.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator from California.

Mrs. BOXER. I thank the Senator for her leadership on this amendment. I know there are several other amendments she will be offering.

The Senator has explained very clearly what has happened to real people who are trying to pay their bills on something that is absolutely necessary for life itself.

I ask my colleague a question on this point. In California, where we had this all begin, there was some ill-advised legislation signed into law by then-Governor Pete Wilson which brought this deregulation to my State. Is my colleague aware that the rates started to double, triple, and more, in our State, that our State government under Governor Gray Davis said, the people cannot afford this. He went out and said that he would, in fact, take care of this crisis.

As a result, our State is in deep debt. About a third of our debt can be related directly to what the electricity companies did with their schemes that you are going to be explaining and I will be talking about later.

Is my colleague aware that a third of the problem in California is directly related to the energy scam?

Ms. CANTWELL. I thank the Senator from California for asking that question and for being a cosponsor. The Senator understands all very well how painful this has been to the California economy.

I was not aware that a third of the problem could be directly attributable to the crisis in California. I know businesses have closed in Washington State. I know people have moved to other regions and made other investments because the rate is high in our State. I know the amount of money paid by higher utility costs for our west coast region is \$6 billion. Ratepayers in the West paid a \$6 billion increase in their electricity bills because of the market manipulation.

When I think about the little time we have, maybe 6 hours total to debate this amendment, we gouged the ratepayers \$1 billion and we are going to talk \$1 billion an hour here. That is hardly the remedy for which I think people are looking. What they are looking for is some immediate action, saying these kinds of activities will not take place again, in the future.

So the Senator from California, Mrs. BOXER, is correct. The impact has been devastating. It has been devastating to California's economy, and obviously we would like to see some relief. For the moment, what we are trying to say in the Cantwell-Bingaman-Feinstein-Boxer-Hollings-Wyden amendment is that this kind of market manipulation ought to be outlawed specifically in the Power Act today so this does not happen again.

As we are looking at natural gas price increases and people are getting anxious, why would we have an electricity title that is unclear as to what the penalties are? Actually, under the Oxley legislation of Senator SARBANES and Congressman OXLEY, on the SEC side, on the auditor's side, it said: We are going to get tough. These are new requirements. We are going to put this in the statute. Yet on the electricity title, we are repealing PUHCA, as my colleague from Washington State said, the one consumer protection law that has been on the books since 1935.

Why would you change a law that has been on the books since 1935 when you just had the biggest pyramid scheme ever to defraud consumers, knowingly admitted by Enron, knowingly admitted by FERC, knowingly admitted by the Department of Justice, knowingly printed by every newspaper in the country that manipulation was going on? Why would you repeal the consumer protection laws on the books? You would actually try to enforce them.

That is what the Cantwell amendment does today, as the clerk read this morning. It simply says the manipulation of those contracts cannot be just and reasonable and put that in the Power Act, plain and simple. Plain and simple, not the 43 pages we have in the title addressing this issue, which I am sure tries to address the issue, but it falls far short.

Mrs. BOXER. Will the Senator yield for just a moment on this point? I am going to go into a markup and then return.

Ms. CANTWELL. Yes.

Mrs. BOXER. My colleague points out that what she is attempting to do in this amendment, of which I am so proud to be a cosponsor, is to make sure what happened to Washington and Oregon and California is not going to happen to any other State, be it Kansas, be it Illinois, be it anywhere else.

For the life of me, I guess I need to say to my friend, does she understand why anyone in this Chamber, knowing what happened to our States, knowing what happened to our businesses,

knowing what happened to our consumers, knowing what happened, in the case of California, to our State budget because our Governor protected the consumers from these rates—can my friend understand why there would be one vote against her amendment, given what we know happened to us?

Ms. CANTWELL. My colleague from California has asked a question that is very important. No, I cannot imagine why any of my colleagues would want to vote against this amendment that prohibits market manipulation and puts that in the Power Act in a very simple way.

She mentioned something very interesting. A lot of people talk about this as the California energy crisis—the California energy crisis. Her economy has been devastated, but California actually had a retail cap, which meant even though those prices were being charged, and it left the California economy in disarray and a bill at the State legislative level that is exorbitant, what happened in Washington State, because we didn't have retail caps, is that the ratepayers actually saw the increase in their day-to-day electricity bills. They saw it to the tune of 88 percent increases, 61 percent increases, 54 percent increases. Those disconnect notices are real. The companies that have left or are leaving the State are real. The long-term impacts on our economy are real.

No, I cannot imagine, if this had happened to any of my other colleagues from other States, that they would not be in the same position I am in today, or Senator MURRAY, saying, at a minimum, outlaw this market manipulation.

So I appreciate the question the Senator from California has asked. I appreciate her keen attention to this issue. I know she has spoken many times on the floor about what has happened to our colleagues from the West and particularly how devastating it has been to her State. I appreciate that.

Mr. DORGAN. Will the Senator from the State of Washington yield for a question?

Ms. CANTWELL. Yes.

Mr. DORGAN. Mr. President, I know she has limited time. I will be very brief, but I did want to ask the question.

It seems to me this electricity title is critically important. I heard my colleague from California ask some questions. I chaired the hearings that dealt with the Enron abuses and other abuses in California and the west coast when I was chairing a subcommittee of the Commerce Committee. What happened there was egregious. It was wholesale stealing, and I use the word "stealing" in a very direct way. There are massive criminal investigations underway.

We have heard the terms Get Shorty, Fat Boy, Death Star—the schemes we unearthed. The people, in memoranda inside the company, were saying: Here is the way we are going to cheat consumers. They created congestion, and

they then got paid for removing the congestion that they created. They actually deliberately cheated consumers, not to the tune of a couple of loaves of bread but to the tune of billions and billions of dollars.

It seems to me, as this energy title is written, there is not one person in the Senate—not one—who would stand up and say: It is fine for consumers to be confronted with that sort of manipulation and cheating or criminal behavior. Not one would say we support that kind of behavior.

If that is the case, if no one is going to support that, and they would not, then should we not write an electricity title that represents the best ideas of both sides of the political aisle here; that says we are going to stop criminal behavior; we are going to stop the kind of activities that attempt to steal from consumers?

I ask the Senator from Washington, have you had an opportunity, or perhaps has the ranking member of the committee had an opportunity, to sit down with those who wrote the electricity title, which we received last Friday, and talk to them about perhaps writing it together so we all accomplish that which we say we intend to accomplish—stopping this kind of manipulation and cheating? Because it did exist and it will again if we do not plug the hole.

Ms. CANTWELL. I thank the Senator from North Dakota for his question. I know he has been diligent, being at the committee hearings during the time period in which the West tried to convince the Federal Energy Regulatory Commission—the policeman on the watch, if you will, when this mugging of ratepayers was happening—we tried to convince the Federal Energy Regulatory Commission that prices were too high, that we were getting gouged. The Senator was very articulate at that time and subsequently, on the Commerce Committee, holding hearings, investigating the activities of Enron.

At that time, we were all speculating that manipulation happened. What has since come out is that the manipulation has been admitted to. It has been admitted to in the memos by the company in those various schemes you have talked about, and we have charts showing the names, of Death Star and Fat Boy and various other schemes. We have had the Federal Energy Regulatory Commission own up: Yes, this is market manipulation.

I have a report here, that is almost too heavy to handle, that basically documents all the manipulation that has happened. We have a Department of Justice investigating and saying yes, manipulation has happened. Yet this electricity title is very scant on putting those things in place.

The Senator is right. This new electricity title appeared last Friday night. I don't know what time it was, but well beyond the time, I am sure, that I was home in Washington State. We started in on it on Monday. But the bottom

line is this underlying Domenici title has some language about: Let's make sure there is no false reporting.

That is in the current statute. It didn't save us. It didn't have anybody stop this or basically put everybody in jail.

Frankly, every time I get home, I hear from a constituent who is paying this high energy cost, paying this 61 percent or 88 percent rate increase, saying: Why isn't Ken Lay in jail? Why is it I am paying this rate increase and I am going to be paying it for 5 or 6 years and Ken Lay isn't in jail?

The transparency clause here is already on the books, making sure people do not report false information to the organization known as the Federal Energy Regulatory Commission. That is already on the books. The round trip trading, yes, is eliminated. But we have other schemes in this bill that are not included in the electricity title and are not outlawed. I think it should be simple.

The Power Act was created to protect consumers. We decided in interstate commerce; that is, the selling of power between States, that the Federal Government should play a role in protecting consumers on wholesale power rates.

We gave to the States the ability through their utility commissions the responsibility to protect consumers' electricity that is sold within each State. But we said as a Federal Government we want to make sure consumers have oversight of electricity. We said in the Federal Power Act we are going to make sure that rates are "just and reasonable." That is our job—"just and reasonable." We set up a commission to do it. Yet now we have seen that market abuse is continuing. And we have colleagues on the other side of the aisle who are proposing we repeal the only consumer protection law which has been on the books since 1935—the Public Utility Holding Company Act—and in its place put some language that basically smacks the hand of Ken Lay but doesn't have any teeth in it—teeth that will really bring to justice people who have manipulated this market.

We may have another day when we can discuss what kind of relief might be given to California or Oregon or Washington. But this amendment today is geared toward protecting people from future abuse by simply saying in the Power Act that manipulated schemes are not just and reasonable; that they ought to be banned in the Power Act. I don't know what is wrong with saying that. I would like to go over the specific details so my colleagues understand exactly what we are trying to say and why the current underlying title comes up short in the sense of not doing enough to protect consumers.

As I said, first of all, the Power Act put in place a broad prohibition on the manipulation of electricity prices. We want to continue that. We want to make sure that in this language we say

manipulated electricity prices are wrong. In the Domenici substitute, we are going to say that round-trip trading; that is, buying and selling of electricity at inflated rates and inflated volumes, is illegal. That is a good thing to do. But that is particularly focused on the shareholder.

We are saying let us protect the shareholder to make sure these guys who are in this manipulative practice of buying and selling on the same day and inflating the price and inflating the volume is wrong and illegal. That is good in protecting shareholders. But how are ratepayers protected? I want to see protection for ratepayers.

In particular, my amendment would add a new paragraph to the act which is based on language the Federal energy commission has had in its power since 1934. This language would make it illegal for any company to use or apply any manipulative or deceptive device to circumvent the Federal Energy Regulatory Commission rules and regulations on market manipulation.

It is simple. Let's just say it. What is wrong with saying what Enron has admitted they have done? What is wrong with saying what the Federal Energy Regulatory Commission has put in the report? What is wrong about saying what DOJ has said about manipulation? Why not be really clear and specific? Any company that uses or applies any manipulative or deceptive device to circumvent Federal Energy Regulatory Commission rules and regulations on market manipulation should be punished.

Second, we want to say specifically that electricity rates resulting from manipulative practices are not just and reasonable under the Federal Power Act.

As we talked about last night and as some of my colleagues have said, we have the establishment of the Power Act and the protections of "just and reasonable," and it is our responsibility as a Federal Government to regulate wholesale energy prices between States. Why? Because in the 1930s, guess what happened. A bunch of companies had too much power and jacked up the price on consumers. They held them hostage. Electricity is something no one should be held hostage for, and certainly no one should lose their home because of a manipulated contract by a company that put a scheme in place.

We had a hearing before the Energy Committee in which I asked the Federal Energy Regulatory Commission chairman, "Do you think if you find market manipulation that it is ever going to be 'just and reasonable,' or ever in the public interest?" Chairman Wood told me, "I can't think of an instance when it would be."

We have the chairman of the Federal Energy Regulatory Commission saying I can't think this would ever be in the public interest or ever be just and reasonable. So why not put it in the Power Act? Guess what. Chairman Wood doesn't write legislation. We write leg-

islation. We are the body that needs to take the responsibility. We are the body that needs to say to the American people we got the message that market manipulation has occurred.

My amendment would clear up any confusion and specifically declare in the Power Act that market manipulation is unjust and unreasonable.

Lastly, this amendment would amend the section 206 of the Federal Power Act requiring the Federal Energy Regulatory Commission to revoke the company's authority to sell at market-based rates whenever the commission finds it "knowingly" employs a strategy to manipulate the electricity market. It says when the Federal Energy Regulatory Commission finds people have manipulated a market that they revoke their market-based rates. Market-based rates is when the company decides what the rates are.

As I said, we in the Northwest have been traditionally comfortable with cost-based pricing that the public Power Act provided. Why? Because consumers get the power at the cost it takes to produce it. As a former business executive, I am all for marketplace competition. But marketplace competition has to have some regulation or some people basically end up controlling the market and consumers get whacked whatever they want. In this case, we know manipulation happened.

Why is this issue so important that we have to actually say to the Federal Energy Regulatory Commission make sure when these contracts have been manipulated that you revoke the market-based rate authority? Believe it or not, even though Enron, months and months ago, admitted in various memos that they manipulated the market, it wasn't until about 2 weeks ago that the Federal Energy Regulatory Commission actually revoked their market-based rate authority. Maybe it was 17 days ago. Sometime in the last 2½ weeks, the Federal Energy Regulatory Commission finally took the action they should have taken over a year and a half ago. We have a Federal agency that has been laggard at addressing this issue.

While we will have other amendments to address the Federal Energy Regulatory Commission and address the fact they have not stepped up to their appropriate role in being the policeman on the books as this mugging of ratepayers happens, because clearly they haven't—it took us, the Members of the Senate and House of Representatives pounding on them for months about the high cost of electricity in our region to finally get a mitigation plan. Over a year later it finally took the hearings of Senator DORGAN and many others and an investigation that we finally got the truth on the table that contracts were actually manipulated. Now it is going to take the effort and focus of this body to say, Let's make it simple. Let us make it really clear: Manipulation of contracts is un-

just and unreasonable. Any company that employs such tactics should not have free rein of the market by having market-based rates allowed under the Federal Power Act and the Federal Energy Regulatory Commission. It is simple.

I want to point out to my colleagues the fact that there are other entities that are way ahead of the game; that is, they are way ahead of us. They are way ahead of this body in saying that Enron manipulated contracts and something ought to be done about it. And that is bothersome. I think we are the protectors of the consumers in the oversight of how well an agency is doing its job and to which we have delegated the responsibility.

I am sure there are people in this body who probably never heard of the Federal Energy Regulatory Commission until this crisis happened. I am not sure the agency has had the bright light of day shined on it too often in its Congressional history.

In fact, the Government oversight committee, then chaired by Senator LIEBERMAN during this energy crisis, had some hearings on whether the Federal Energy Regulatory Commission was doing its job. I thought that was very appropriate. It is very bothersome to me there are many newspaper articles and accountants of Ken Lay actually lobbying members of the Federal Energy Regulatory Commission on whether they should have a cap or a plan in trying to control or mitigate prices in the western energy market. He lobbied for Commissioners he thought would not put a cap in place. He lobbied for people he thought would continue the trend toward deregulation of the market.

I do not know why we should listen to Ken Lay's energy plan and who he thinks should be the nominees in these instances. We even have one newspaper article that suggested he was for the renomination of the current Chairman of the FERC but only if he would continue to have a free market strategy and make sure these prices that basically had been charged were kept in place. I think that is unconscionable. We need to do something to make sure this agency has our trust in the Senate and the trust of the American people. I think that is critically important.

Even though my colleagues have been hearing about this crisis for a couple years and some may think it is over, it is not over for the ratepayers of Washington State. It is not over for the California economy. We are stuck with this bill. We are stuck with the impact of these manipulated prices.

But I want to be clear, there are people who knew this was going on. And they have admitted it—Enron itself. Enron knew we were going to get access to this information eventually, so basically they produced the smoking gun memos where the company said it engaged in practices to manipulate the western power market. And they knew it was wrong.

In fact, even when these memos were starting to be uncovered, people realized these tactics had these exaggerated names that were not going to sound too positive, so they ended up saying: Well, let's change the names. I am not sure if it was Fat Boy—oh, yes, Death Star. Death Star was the name of a tactic used to manipulate the market, and they said: Well, if that comes out maybe that won't sound like such a good name. Let's change that to Cuddly Bear.

So somehow we were not going to find out there was market manipulation in place because Death Star all of a sudden became Cuddly Bear. It does not matter whether you change the code name, the impact on my State is the same. It is wrong, and this body ought to outlaw it.

So when FERC finally began to investigate, they realized this problem, as their report concludes, was significant and "epidemic," and the epidemic market manipulation took place in the West. Their own report says there is overwhelming evidence that suggests "Enron and its affiliates intentionally engaged in a variety of market manipulation schemes that had profound adverse impacts on the market outcomes."

In fact, the report goes on to say:

Enron's corporate culture fostered a disregard for the American energy customer. The success of the company's trading strategies, while temporary, demonstrates the need for explicit prohibition on harmful and fraudulent market behavior and for aggressive market monitoring and enforcement.

That is what the Federal Energy Regulatory Commission is saying has transpired and what we need. It "demonstrates the need for explicit prohibition on harmful and fraudulent market behavior and for aggressive market monitoring and enforcement."

It is not FERC's job to write the law. It is FERC's job to enforce it and interpret it. Our job is to act. They are telling us they need to have this market behavior monitored and enforced, and that this problem demonstrates the need for an explicit prohibition. Let's give them that explicit prohibition. Let's put into the Federal Power Act that the manipulation of prices cannot be just and reasonable and companies that participate in that practice do not deserve to have market-based rates.

As I mentioned, FERC just came to this conclusion recently, so it is a little troubling that it took them so long, after so much damage has been done—\$3-plus billion to the California economy, over \$1 billion to the Washington economy, and billions more to Oregon and, I am sure, other parts of the West. So we don't want them to be confused or slow to pick up the regulatory framework and to use it as a hammer against these kinds of manipulations. So let's make it really clear.

DOJ thinks this manipulation is wrong. The U.S. Department of Justice believes what Enron did was, as they said, wrong and fraudulent. The De-

partment of Justice continues to conduct investigations into Enron's activities. It has filed criminal charges levied against 16 different employees, most recently resulting in one of those 16 arrested, a trading desk manager. Already, two Enron traders have pleaded guilty on charges of conspiracy to commit wire fraud. And charges are pending against another.

So DOJ knows it is wrong. Yet in the electricity title we have not put in strict enough language to prevent it from happening again.

One of the most recent criminal complaints filed against an Enron trader by the U.S. Attorney's Office says: Based on the facts, there is probable cause to conclude that between approximately June 1999 and January 2001 the Enron trader unlawfully conspired to commit and did commit acts in violation of the Federal law. There is probable cause to conclude that the trader committed the offense of wire fraud in violation of title 18, United States Code, and conspired to commit the offense of wire fraud in the northern districts of California and elsewhere.

The Department of Justice knows these acts are manipulative and illegal. The fact that they only have two people indicted so far—and we still don't have justice as it relates to Ken Lay; and it was the diligence of those on the west coast and Members here saying manipulation went on—bothers me; it has taken so long. So I certainly want to make sure there is no question that we think these activities are wrong and that something should be done about it. That is why we need tough language.

Now, this body did its job as it relates to the auditing of regulators and reform after Enron. This CRS report for Congress—basically that is part of the report about the Sarbanes-Oxley act—talked about how we stepped up and did our job as it related to the auditing and accounting practices of these organizations.

Now, why was that important? It was important because not only did ratepayers get gouged, but people counted on those companies and their truthful reporting in their businesses. And the investors investing in those businesses counted on that truthful reporting. We uncovered that there was a lot of manipulation going on there as well. There was a lot of misinformation about what really was the cash and capital of these companies and whether the investments by investors really should have been made, given that the long-term outlook of the companies was not based on real numbers but on these manipulated schemes.

So what did we do? We didn't repeal accounting laws that were on the books to protect consumers. We stepped up and said: Let's make this stronger. Let's get the Sarbanes-Oxley act in place. In fact, the act creates a new oversight board for auditors. It prohibits auditing firms from providing

certain consulting work for auditing clients so there is no conflict of interest in who they work for. It requires the rotation of all the partners. It imposes new regulations on corporate boards and executives. It increases government oversight and criminal penalties. We took tough action as it related to the auditors. We protected the shareholders moving forward from having this kind of scheme from an auditing perspective happen again.

If we were so ready to jump on this issue as it related to the auditing practices and the accounting practices of these companies, and we protected the shareholders and the individuals who may have had pension plans or investments in these companies, why aren't we now going to protect the ratepayers who actually got gouged with the high cost of these contracts? Why aren't we going to say this is so egregious that we should never allow it to happen again; that we, the Congress, believe that we are no apologists for Enron? We are not going to condone market manipulation. We are going to say, just as we did with accounting rules and auditing rules, we are going to have in the Power Act the same message; that manipulating contracts is unjust and unreasonable and anybody who participates in market manipulation does not get to have free market power under the Power Act. It is simple.

Let me talk about what is in here because I believe Chairman DOMENICI and his staff probably did try to say that some manipulations happen and we ought to do something about it. But I don't think we have covered the full gamut of issues that need to be covered. The Domenici amendment refers to round-trip trading. Round-trip trading is simultaneously buying and selling electricity to stimulate both the amount of electricity trading that was going on and to stimulate and increase the price. So the Domenici amendment says round-trip trading is wrong. And that is good. It is good that we took one of these schemes and shot a hole into it and said this is wrong.

But there are many other schemes that are not covered under the Domenici title: Fat Boy, also known as Icing Load, to create real-time power markets. According to Enron's own memos dated December 6 and December 8, 2000, Fat Boy was "one of the most fundamental strategies used by the traders." According to one, "the oldest trick in the book" and "is now being used by other market participants."

What Fat Boy did, when you boil it down, is Enron submitted false power supply schedules to the California ISO—the California organization in which power was bought and sold—and other market participants for the purpose of receiving payments when it didn't actually need the extra generation. So in essence Enron received untold millions of dollars for pretending to keep the lights on in the West when it really didn't need to. There is nothing in this current Domenici title that

prohibits Fat Boy from happening. Yes, you say, you can't lie to FERC. There is nothing in the act that says you can't lie to the California ISO, which is exactly what Enron did under the Fat Boy scheme.

That was the whole point of California deregulation. That is what people went to the legislature and sold them, just as they are trying to sell us. Hey, guess what, California. If you deregulate, market competition is going to drive down the price. And we will create this mechanism, the California ISO, which stands for the independent system operator. We are going to make this scheme where an independent system operator is going to get you cheap electricity. And all those people in the marketplace who want to sell power and sell it at a cheap price, we are going to drive down the price.

That is not what happened. The price went up. It escalated. So they defrauded the California ISO. There is nothing in this underlying bill that protects the ratepayers from having Fat Boy happen again because it does nothing to prohibit lying under these kinds of schemes to the California ISO or any other organization like that.

Richochet was also known as Ping Pong. The sole purpose of this scheme was to evade California's attempts to put price controls in place. Knowing that FERC wasn't really paying attention, they were given market-based rates. They said: Go out and see if you can drive down the price of electricity. And under this scheme, basically to get out of the price controls that California was trying to put in place and control, the traders, instead of trading within the State of California, would ship their power outside of the State and then ship it back in. Yes, that is right, just like the ping pong ball, back and forth on a ping pong table, pushing power to one side and pushing it back—Richochet.

If we push it out of California, then we are not subject to those State regulations, and guess what. When we ship the power back in, we can ship it in at the price we want. That way we avoid the caps of the California ISO and the power exchange that is trying to enforce them.

So the prohibition on round-tripping in the Domenici bill does nothing to prohibit Ricochet or Ping Pong from happening again. This kind of practice of shipping out of State and shipping back in is not illegal under the Domenici title. But it will be under the Cantwell-Bingaman amendment if this body will adopt it.

Let me talk about Death Star for a second. That is the one, yes, renamed Cuddly Bear. I don't care what you call it, there is no way the American public, the public in Washington State, doesn't know that this wasn't a cuddly bear. This was an unbelievable scheme that has ruined our economy. The essential strategy of Death Star was for Enron to earn money by lying about its transmission needs, scheduling trans-

mission in the opposite direction of the congestion. No energy, however, is actually put on the grid or taken off, according to the company's own memos.

So wait a minute. We were saying to people this is what is going to be on the grid, but then we don't really put it on the grid.

The U.S. Attorney's Office described in a June court paper that Enron submitted schedules to the ISO that pretended to move the electrons owned by Enron, but in reality it didn't. Because of this, it appeared to relieve congestion. So the ISO awarded Enron congestion relief payments. Basically by pretending it was putting power out there to relieve congestion, which it really didn't, the ISO gave them relief payments. The ISO was deceived because part of the looping scheme was outside of California and, therefore, it couldn't be detected, thereby costing more money.

According to the Department of Justice, senior Enron traders denied they were doing this practice or violating any market rules. So basically what we are saying is that there were people at Enron who told other fine people who probably worked at Enron and who were trying to do their jobs, there is nothing wrong with this. This is totally OK to do.

One of the trading managers was smart enough and said: We are worried that the details of the strategy would be leaked to the ISO and other power companies or the public. One of the consequences of his concern was that he was instructed to refrain from calling this Death Star. That is when they said: Gee, employees are getting nervous about this scheme; they don't think it is right. Let's change the name to Cuddly Bear and maybe everybody will be OK with it. Well, we are not OK with it.

The underlying Domenici electricity title does not prohibit Death Star from happening again. Only the Cantwell-Bingaman amendment will do that.

Load shifting was another ploy. To employ this tactic, Enron would distort its transmission schedule to create the appearance of congestion, or knowingly increase the congestion cost to all market participants. Again, more misinformation. The underlying Domenici title says nothing of falsified information provided to the FERC. Well, FERC already has language in there about reporting. It didn't get them to stop Enron from following these practices. It doesn't require or make illegal any of these practices of providing misinformation to the California ISO.

Remember, the California ISO was an organization that basically was created after deregulation. After deregulation, people went to the California Legislature and said: We will create a mechanism where the marketplace buys and sells power at a cheap rate. We will let the market do it.

Under the California ISO, the independent system operators basically

were supposed to help control price. That is where the misinformation was, where the lying and fabrication of information took place. This underlying bill does nothing to protect or say that those kinds of activities to the California ISO, an independent system operator, are illegal. It has no teeth as it relates to that. So nothing in this underlying Domenici electricity title will protect us from load shifting. The Cantwell-Bingaman amendment will.

Get Shorty. Like many Americans, I thought this was a title of a movie. I thought it was supposed to be a joke. But in my State it was not a joke to the ratepayers who actually had a premium price increase. Basically, what they did was they gambled that it would be able to find service at a cheaper price the next day. Enron's own memos admitted that "this was obviously a sensitive issue because of reliability concerns." Indeed, the company stated that it would be "difficult to justify our position if the lights go out because these services were not available, and the reason was because we were selling them without actually having them in the first place."

They basically were saying: We are going to have a scheme where we are going to say there is power available when there is not. And then when the lights went out, they knew they were going to have concerns. They knew. How they could think the west coast economy would not be reached by this havoc being laid upon them. I cannot understand. I cannot understand the corporate greed that goes into this kind of thinking—that somehow this kind of marketing strategy would be good for California, good for Washington, good for America, good for corporate business, good for our confidence as a country—confidence that we as a government are going to say this kind of manipulation is wrong. It has created a huge deal of unrest in the West. Nothing in the Domenici electricity title prevents Get Shorty from happening.

Wheel Out. I am not sure what marketer came up with this one. Enron would submit schedules for a transmission on line they knew was out of service. In doing so, the company would earn extra payments for their trouble. It is not even available. It is sort of like a cab driver heading straight for a traffic jam in order to keep the meter running on an unsuspecting tourist, basically saying: I am going to get you into congestion and it is going to cost you a lot. The poor passenger in the car doesn't know there is a quicker route, a cheaper way, a more expedient way to control the cost. But unlike a cab ride, the costs of this are not in the tens of dollars but in the millions of dollars, and the cost to our economy has been in the billions of dollars. There is nothing in the Domenici underlying amendment that would prohibit the Wheel Out strategy from happening again.

The Cantwell-Bingaman amendment says that the Wheel Out strategy is

manipulation of the market—it is manipulation. Under the Federal Power Act, it cannot be just and reasonable that companies that deploy these kinds of practices should not have market-based rates.

I hope there are not any more schemes. I hope I don't have any more charts because this is enough. This is enough of the tactics that were deployed by a company that basically thought that making a few more dollars through manipulative practices was somehow OK to do.

I read some of those quotes from employees at Enron who said: I don't think this is right; I think this is a concern. Yet they continued.

So the Cantwell-Bingaman amendment, which is supported by Senators HOLLINGS, MURRAY, BOXER, FEINSTEIN, and others, simply says let's put into the Power Act that manipulation is not just and reasonable.

We have had lots of support: The Northwest Public Power Association, Northwest Energy Coalition, AARP, Consumers Union, International Brotherhood of Electrical Workers, Consumers for Fair Competition, National Association of State Utility Consumer Advocates, Union of Concerned Scientists, U.S. Public Interest Research Group, and many other organizations, such as members of the AFL-CIO, and many people who are concerned about the economic impact of manipulation happening prospectively on natural gas.

Why won't somebody just take this experiment that happened in California and the West and say, OK, we will—with the current Domenici language, Congress barely smacks the hands of those Enron traders. Gee, only one of them went to jail. I guess you have to be smart enough not to be the one who gets caught with a memo on an electronic file on your computer, and, guess what? You will get out of this. So let's take this same kind of scheme and deploy it for natural gas.

That is what this amendment is about. This amendment is about saying that natural gas in the future will have better protections of consumers in mind regarding potential rate increases. So, if we have an increase in natural gas prices, maybe because of shortage of supply, guess what, we will really know that it is about shortage of supply. We will really know. We will be able to tell consumers in America that we really know it was about not having enough supply; it was not because some natural gas producer had tons of supply but manipulated the market through a variety of schemes and somehow gouged consumers, and that is why your rates are higher. Can we not give the American consumer that kind of confidence about our energy? I sure hope we can.

This issue has a real impact on people, and I know my colleagues are in the Chamber, and they want to speak, but I wish to share one letter from an 11-year-old girl whom I met almost a

year and a half ago. I did not know at the time she had sent this letter, but she lives in a region of the State where they have had a 71 percent rate increase—a huge increase.

This 11-year-old girl sent an emotional letter about how the crisis was affecting her family, that her mom was living paycheck to paycheck. That actually the job her mom had was dependent upon affordable electricity. She wrote:

This is the first time I've lived in a house. This is the most important thing in my life, that we get to live in a house. Please listen to what might happen to hundreds of kids, including myself, when my mom might lose her job and we might have to move out of our house.

The impact is being felt by young children, not just by the parents who might lose their job. Not just by the Snohomish County ratepayers who had 44 percent disconnect notices, but by young children who are fearful that their families are not going to make it because these schemes caused these rate increases that we are stuck with for years and years.

There is somebody sitting in their office somewhere in America saying: Gee, why don't you just sue those Enron people? Why don't you just sue them and tell them that under the Federal law, they cannot manipulate these contracts? I think people in America would be surprised to know that Enron is suing these utilities. Enron is turning around and suing these utilities and forcing them to pay these rate increases. They are suing the Snohomish County public utility district, saying: That contract—that has been manipulated—that you signed for 5 years of power, even though it is manipulated and you are paying a 54-percent increase, we are not letting you out of that contract; we are suing you.

This is the only body that can protect people in the future. It is only the Senate and the Congress that can say: This manipulation is wrong. This manipulation, moving forward, is wrong. Then ratepayers in my State in the future, if this happens, might have a chance.

We have had letters from senior citizens who are trying to live on a fixed income. This burden has made them make decisions about how they are going to live in the future. One woman from Okanogan County said: My friends, myself, and my neighbors cannot afford the higher rates:

I am in a total panic because I am disabled and barely can pay for heat now. With these rates going up as much, it will make it a life-threatening situation. This will become a public health disaster. To make matters worse, many businesses are planning on shutting down here due to the terrible economy and the power costs. This is putting the last nail in our coffin in a dire economic situation in Omak, WA.

That is what the ratepayers in my State think. Not just: Oh, please, Senator CANTWELL, Senator MURRAY, please, Members of Congress, smack the little hand of the Enron people and

tell them that was a no-no. They are saying these are dire circumstances, these are life-threatening situations, these are public health risks. We ought to stand up today and say this kind of market manipulation is not just, it is not reasonable, it is not in the public interest, and these variety of schemes from Ricochet to Fat Boy to Death Star are not legal, they are examples of manipulation, and companies that practice such manipulation should not be given market-based rates.

I could go on about this issue and talk about how our Northwest economy has been impacted by the number of jobs lost. I know several of my colleagues wish to speak on this issue, and I am going to give them the opportunity because I know they have been engaged in such dialog and speaking out on this issue. I want to give them a chance to continue to express their opinion on this issue as well.

I do not know if the Senator from Iowa wants to have a few minutes now, but I am happy to yield to him—for how much time?

Mr. HARKIN. For 10 minutes.

Ms. CANTWELL. For 10 minutes of the time I have remaining, Mr. President.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. I thank the Senator from Washington for yielding to me. I want to help her on this amendment. I ask unanimous consent to be added as a cosponsor to the Cantwell amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. Mr. President, after listening to Senator CANTWELL's exposition of the crimes, manipulations, and the fraud perpetrated on the American people by the Enron Corporation, it is, again, amazing to this Senator that we have not done something about this situation before now. I am amazed this is not taken care of in the underlying bill.

We know that what Enron did can happen again if we do not address it. If we do not ban it, as Senator CANTWELL does in her amendment, it will keep happening over and over.

In the 1930s, at the height of the Great Depression, Congress realized one of the most important factors was the collapse of the electric utility industry. It turned out this basic industry had been built on fraud after fraud, shell game upon shell game, and when economic troubles hit, it collapsed like a house of cards.

Congress's attempt to prevent this from happening again was the Public Utility Holding Company Act of 1935, otherwise referred to around here as PUHCA. That was our attempt in the 1930s to prevent what was happening then from happening again, with all the frauds and the collapse of the house of cards of the electric utility companies.

Then we go forward 60 years to about the midnineties, and we were told that

the restructured electric utility industry would be built upon markets and trading, that the markets would ensure the soundness of the industry, that the PUHCA now was just a hindrance to cheaper power, more available power, for all of our consumers; that PUHCA was not only irrelevant but probably even a hindrance.

Enron was both the leading participant in and the leading advocate of this new scheme of electricity markets. They were not the only one, but they were the leading one. They were the ones that had the closest ties to people in Congress and to the Bush administration.

It turned out that Enron, like the electric companies of the 1910s and 1920s, was also built upon frauds, shell games, and out-and-out criminal activity. When troubles hit, Enron, too, collapsed like a house of cards. Again, this is what we saw in the 1930s.

As Senator CANTWELL has brought out, we had a whole new set of terms of art that entered our vocabulary: Fat Boy, Get Shorty, Death Star, and many more. Enron had legions of employees who were paid to dream up ways to defraud the public and manipulate prices of electricity and transmission capacity. They ranged from affiliate structures, creative loans, trading strategies.

We have heard about Wheel Out, about how they tried to sell electricity through nonexistent lines. Again, Enron was not the only one. FERC has found dozens of companies were involved in fraud, that market manipulation was epidemic.

The whole energy industry still has not recovered. In fact, the whole economy is hurt by investors who have lost their trust in American corporate management.

Now we see that PUHCA, the Public Utilities Holding Company Act, was, in fact, irrelevant to Enron schemes. Why? Because FERC had determined that Enron was exempt from the law. Even that was not enough for Enron's chairman Ken Lay, who later threatened to remove the FERC chairman if he did not back his beloved markets and schemes more strongly.

Where is Ken Lay today? Is he in prison? Is he behind bars? Well, of course not. I understand he had to sell a couple of his big houses, one in Colorado and one someplace else, but he is out free. He may be on the French Riviera for all I know. I do not know where he is. He made a lot of money. He sacked it away and he is living a grand life.

Now I guess a couple of his underlings went to jail because they got caught, but Ken Lay, the brains behind the whole scheme, the person who threatened to remove the FERC chairman, is scot-free. So much for justice in this regard.

At this point I doubt this Justice Department is going to do anything to really go after Ken Lay because of his closeness to the Bush administration.

But Enron showed more clearly than any episode since the Great Depression that strong Federal oversight is needed in the electric industry; that fraud hurts consumers, investors, and our whole economy.

The Domenici substitute bans one particular trading scheme, round-trip trading, but it leaves all the other schemes with these names we have heard of from Star Wars. It would still leave them there, and Senator CANTWELL just laid all of those out for us. So it would leave all of those untouched.

Why just ban one and leave all the other ones there? Well, as one step to restoring confidence in the energy industry and thus getting the economy moving again, we need to ban all such market manipulation. That is what the Cantwell amendment does and that is why I support it.

The Presiding Officer is from the State of Missouri, the home State of one of my political heroes, Harry Truman, a great Democrat. Harry Truman once said when he was campaigning in 1948 in the Midwest and talking to a bunch of farmers who had lost a lot in the Depression and he was telling them that his opponent, Mr. Dewey, was going to turn the clock back and they were going to get rid of all of the support they had had for agriculture. Truman uttered one of his great lines. He said: How many times do you have to get hit on the head before you figure out what is hitting you on the head?

Well, I would like to take Harry Truman's line and apply it to us and the electricity industry. How many times do we have to get burned by fraudulent schemes in this industry before we figure out what we ought to do about it and ban all of these activities? How many times do we have to get hit on the head before we figure out there are deep problems in the electricity industry and they have to be solved? Because if they do not, it is going to continue to hurt our economy.

Our economy right now is in terrible shape. I will divert just a little bit from this bill for a few minutes if the Senator does not mind.

The PRESIDING OFFICER. The time of the Senator from Iowa has expired.

Mr. HARKIN. I ask for an additional 5 minutes.

Ms. CANTWELL. How much time is remaining?

The PRESIDING OFFICER. The Senator from Washington has 32 minutes remaining.

Ms. CANTWELL. Five minutes.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 5 minutes.

Mr. HARKIN. Mr. President, in March of 2001, President Bush visited Western Michigan University to stump for his tax cuts. He said:

... we can proceed with tax relief without fear of budget deficits, even if the economy softens.

Of course, today we know that what the President said that day was not

true, and I think it is time now that the White House comes clean on this issue. We do not know whether the President was aware at the time he made this statement that it probably was not true, but somebody should have known.

Surely, someone in this administration knew that trillions of dollars of tax breaks, combined with a downturn in the economy, would lead to massive budget deficits.

Following that speech, this administration gave trillions in tax breaks to the wealthy, the economy softened, and we have gone straight from record projected surpluses to record projected deficits and debt. In fact, just 2 years later, the United States now faces massive, prolonged, record-setting projected deficits—over \$450 billion this year, \$475 billion next year, and trillions of dollars of deficits over the coming years.

So, what the President said that day in 2001 was in fact woefully false.

Now, I know the other side is going to accuse me of making a mountain out of a molehill on this issue. They will say I am just taking 16 words from one speech and blowing them out of proportion in order to challenge the President's credibility. They will ask: How can 16 words in one speech be the test of a President's credibility?

Yes, I can hear the President's defenders already. They will say: This speech was cleared by the Council of Economic Advisors. It is not the President's fault. He relies on the technical advice of experts on these matters.

Maybe that is the case. Maybe the President thought he was telling the truth when he said we could reduce Government revenues by huge amounts without causing deficits. But somebody should have known it was not true.

If not one in this administration knew that passing enormous tax breaks for the wealthy, combined with an economic downturn, might lead to exploding deficits, that does not exactly inspire a lot of confidence, either.

The President's defenders on this issue may also say:

Well, actually, the statement is technically accurate, and did not mislead anyone. After all, it says we can proceed without fear of budget deficits. It does not say we will not actually experience massive budget deficits. It just says we do not need to fear them.

Unfortunately, that explanation will not work, either. As Alan Greenspan has reminded us repeatedly, large deficits do matter, and they are something to be concerned about.

In truth, it is pretty obvious that the White House intended to communicate that the President's massive tax cuts would not create corresponding massive deficits. It is now apparent that someone misled the public in that speech by the President.

"Well, but even if what the President said was not true," I can hear his defenders say, "it does not matter. What matters is that we did what we really

set out to do. We provided the most affluent Americans with large tax breaks. We rewarded our largest campaign contributors with millions."

Now, I hope that is not the real explanation. But that is what actually happened.

These days the administration does not want us to pay too close attention to what the President actually says. In fact, sometimes they would rather we disregard it altogether, especially when it is only 16 words. They say it does not really matter.

In this case, as in others, what the President of the United States says does matter. The President needs to come clean about these remarks. He needs to admit his mistakes. Otherwise we are left with the distinct impression the President, his advisers, or both, purposefully misled the American people about the economy in order to get tax breaks for the wealthy.

If they were a mistake, these 16 words, then the President ought to admit it. The resulting policy is driving our economy into the ground. If they would acknowledge the statement was wrong, hopefully we could all come together to remedy the President's economic malpractice and get the economy moving again.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Ms. CANTWELL. Mr. President, I yield 5 minutes to the ranking member, Senator BINGAMAN, who is a co-sponsor of my amendment. He has worked hard in bringing attention to everyone about this issue of market manipulation.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I thank Senator CANTWELL for yielding time on this amendment. I am a co-sponsor of the amendment. I commend her for offering the amendment and focusing the attention of the Senate on this important set of issues.

The electricity title is perhaps the most complex part of this entire Energy bill. We recognize and understand there is a lot of complexity in writing a provision or a title that governs the regulation of electricity.

However, the issue that the Cantwell amendment deals with is not complicated. It is extremely straightforward. Frankly, I am at a loss to understand why we cannot get agreement between Democrats and Republicans in the Senate to go ahead and close this loophole which has become so clear to everyone in the country who has paid any attention to energy prices and energy markets in recent years.

Just a year ago, newspaper stories had almost daily headlines about power marketers manipulating the market in California and in the Northwest States, Washington and Oregon, in particular. Unfortunately, it seems something has been forgotten since those stories were written a year ago.

Senator CANTWELL has outlined very dramatically and effectively the parade

of these schemes devised to defraud utilities—and ultimately to defraud consumers—that have resulted in consumers paying substantially more every month when they pay their utility bills. They have very exotic names. But the truth is, her amendment is extremely straightforward.

Let me read the operative part of this amendment and ask how this can be objectionable to anyone.

It shall be unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of electric energy or the purchase or sale of transmission services subject to the jurisdiction of the Commission, manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may promulgate as appropriate in the public interest for the protection of electric ratepayers.

What is wrong with saying it is illegal to engage in manipulative and deceptive practices? I cannot understand why we are spending so much time debating an issue that seems so straightforward to me.

The Domenici substitute does prohibit round-trip trades. And they should be prohibited. Unfortunately, it does not go the next step and do exactly what I just read, which the Cantwell amendment would do. We need to add this provision. We need to be sure the tools are there in the Federal Regulatory Commission to do this job in the future.

I sympathize with the statements the Senator from Washington has made about the inaction of the Federal Regulatory Commission in the early months of the Bush administration. There was a period when prices were going through the ceiling, particularly on the west coast, and we were not seeing action out of the Federal Regulatory Commission as we should have. That was corrected, in my view at least. It was corrected after the new chairman came in, Chairman Wood, and began to assert the authority the Federal Regulatory Commission had and should have been asserting all along to go ahead and step in.

This is an additional tool. We should give FERC this tool and make it clear in the law that all of these deceptive and manipulative practices are illegal. Once we make that clear, we are in a position to hold the Federal Regulatory Commission accountable if, in fact, manipulative or deceptive practices occur in the future.

This is not an academic inquiry. These practices resulted in increased utility bills for many Americans. The Senator from Washington should be commended for stepping in to ensure that does not recur in the future.

I yield the floor.

The PRESIDING OFFICER. The time of the Senator from New Mexico has expired.

The Senator from Idaho is recognized.

Mr. CRAIG. I yield myself 5 minutes of our time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAIG. I come to the floor this morning frustrated in part by some of the debate that has occurred on the floor. The Senator from Washington and I agree the ratepayers of the Pacific Northwest have been injured by a dysfunctional California market that was badly designed and badly conceived from the beginning. In fact, it got so bad and it has been so dramatically treated in the wrong political way that we have a gubernatorial recall going on in the State of California right now.

Finally, the ratepayers of California got it figured out. The politics of California destroyed the market and the ratepayers of Washington, Oregon, and Idaho had to help pay for it.

To come to the floor this morning and say nothing is going on and nobody is being prosecuted is, in fact, wrong. It is not telling the whole truth. The title we have in front of us, the electrical title, still allows thorough and aggressive prosecution of those who violate the law.

Where is the regulatory gap that is being talked about this morning that the Senator from the State of Washington, by her amendment, might change? Here are the agencies involved at this moment: The President's Corporate Fraud Task Force, the Federal Bureau of Investigation, the Federal Regulatory Commission, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the United States Postal Service, and numerous U.S. Attorney's Offices. Their cooperative enforcement activities have focused on investigations of possible round-trip trading, false reporting, fraud, manipulation of energy companies and their affiliates, employees, and their agents.

There is a list of some of the actions taken on various Federal agencies. Let me run through them:

Starting on July 16, 2003, the FERC administrative law judge recommended Enron be required to refund \$32.5 million for violating section 205(c) of the Federal Power Act.

June 25, 2003, FERC revoked the market-based rate authority of the Enron power marketing entity.

June 3, 2003, John M. Forney, manager of the Enron real-time trading desk during 1999 and 2000, was arrested and charged with wire fraud and conspiracy.

May 1, 2003, new criminal charges were filed against former Enron chief financial officer, Andrew Fastow, including charges of security fraud, insider trading, falsification of Enron accounting records, tax fraud, and self-dealing.

I could go on, and I have numerous lists. But that is Enron.

Let me go to Reliant Resources: May 12, 2003, Securities and Exchange Commission issued a cease and desist order against Reliant Resources and Reliant Energy arising from Reliant's admission in May of 2002 that it conducted round-trip trading for the purpose of artificially increasing trading volume.

Dynegy, another energy company, June 12, 2003; the U.S. Attorney's Office for the South District of Texas charged three former Dynegy employees with conspiracy, securities fraud, mail fraud, and wire fraud in connection with round-trip energy trades, and the Securities and Exchange Commission also filed civil securities fraud charges against the former employees.

How about El Paso Corporation? May 9, 2003—in May of 2003 FERC deferred action in a pending proceeding stemming from allegations of affiliate abuse and anticompetitive impacts on the delivered price of gas and the wholesale electric market in California.

It goes on and on. I have four more pages of about seven items per page of actions that have already been taken against these companies.

The question is, Does the electrical title that we have before the Senate today create a regulatory gap? The answer is quite obviously no.

Does it change the problem in the State of Washington? Washington got stiffed by the old law and the old process. Idaho's ratepayers got stiffed by the old law and the old process. And the citizens of California have finally said: We have a Governor who will not do anything about it. He put us in a huge deficit problem, and we are going to throw him out of office. And that is what that recall is about. It all stems from a phenomenally dysfunctional electric market that the people of California created, and they created it by deregulating wholesale and regulating retail and in came the scammers and the scammers are now being prosecuted as they should be.

I do not believe the amendment is necessary. I believe the title in this bill on electricity appropriately addresses this. There is transparency. There is no regulatory gap.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Washington.

Ms. CANTWELL. Mr. President, I know my colleagues from the other side of the aisle want a chance to use up some of their time. I do not know whether the chairman wanted to speak now. The Senator from Louisiana was going to be yielded a few minutes, also. I do not know if the chairman wanted to use time.

Mr. DOMENICI. Mr. President, how much time does Senator CANTWELL have left?

The PRESIDING OFFICER. The Senator from Washington has 21 minutes remaining.

Mr. DOMENICI. The Senator from New Mexico has a half hour less than the Senator—

The PRESIDING OFFICER. The Senator from New Mexico has 24 minutes remaining.

Mr. DOMENICI. I inquire if the Senator from Louisiana desires to speak?

Ms. LANDRIEU. Yes, Mr. President, I desire to speak both in support of the chairman—

Several Senators addressed the Chair.

Ms. CANTWELL. I yield to the Senator from Louisiana 5 minutes.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I will yield and speak after Senator LANDRIEU.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 5 minutes.

Ms. LANDRIEU. Mr. President, I would like to ask, since it seems there is enough time, if I could have 10 minutes. I ask unanimous consent for that.

Ms. CANTWELL. The Senator is yielded 10 minutes.

The PRESIDING OFFICER. The Senator from Louisiana is recognized for 10 minutes.

Ms. LANDRIEU. Mr. President, I rise in strong support of the Domenici substitute electricity amendment. There have been few other parts of the Energy bill that have been more controversial or that have been the subject of more debate than the electricity provisions. The Domenici amendment is a well-crafted compromise that represents some of the best thinking on electricity deregulation. It is worthy of the support of all Senators because it addresses those issues that need to be addressed and does so in a fair and balanced way.

The Domenici amendment deserves the bipartisan support of the Senate because it provides Federal agencies such as the Commodity Futures Trading Commission and Federal Energy Regulatory Commission with new tools to prevent and penalize anti-consumer and manipulative behavior, including false price reporting and simultaneous trading of the same volumes of electricity between two entities, known as round-trip trading. It encourages distributed and renewable generation through a nationwide net metering program; in other words, it allows entities that use solar power or small gas generators to put excess electricity back into the grid.

It moves the FERC's refund authority back to the filing of a complaint. Currently there is a 60-day grace period before refunds can be issued—the proposed language removes the 60 days. It expands FERC's merger review authority by increasing the number of transactions that will be subject to FERC review and approval; in addition to utilities FERC now will be able to review mergers of transmission assets. This prohibits so-called "slamming" and "cramming." This concept comes from the telecom industry. Slamming is when retail customers have their service switched unknowingly, for example, AT&T to Sprint. Cramming is when retail customers have items added on to their bills unknowingly, for example, call waiting.

It requires the FTC to issue rules protecting the privacy of electric consumers; and the customers information cannot be shared without their consent. It requires FERC to issue a new policy establishing conditions under

which public utilities may charge market-based rates. This policy is to consider consumer protection, market power and other factors deemed necessary by FERC to ensure that market based rates are just and reasonable. FERC cannot switch to market base rates if a monopoly exist or else will have to employ cost based rates.

Let me talk a few moments about the consumer protection provisions of this amendment. This is an area where some of my colleagues say the Domenici amendment does not go far enough. I believe that the provisions of the Domenici amendment are a significant first step in the right direction. Let me tell you why. First, the Domenici amendment would require FERC for the first time to issue rules to establish an electronic information system to provide information about the price and availability of wholesale electric energy and transmission capacity. Transparency is key to well functioning and fair electricity markets and this amendment will significantly improve transparency. The amendment further seeks to ensure market transparency and integrity by prohibiting the filing of false information regarding the price of wholesale electricity and availability of transmission capacity.

Second, the amendment would prohibit specific manipulative conduct and practices, including simultaneous trading of the same volumes of electricity between two entities—round-trip trading.

Third, the Commodity Futures Trading Commission is given important new authority that will improve market transparency and further strengthen anti-manipulation powers. These new powers include a strengthening of the CFTC's authority to investigate and punish fraud and manipulation in the reporting of electric and natural gas prices and an expansion of the CFTC's general anti-fraud authority to cover certain on-line trading platforms, like those run by Enron.

Fourth, the amendment substantially increases criminal penalties for violations of the Federal Power Act to \$1,000,000 per violation and civil penalties are substantially increased as well.

Finally, the refund effective date for violation of the "just and reasonable" pricing standard under the Federal Power Act is moved back to the date of the filing of a complaint, thus giving consumers a greater likelihood of receiving refunds where prices are found not to be "just and reasonable."

In short, this is a good consumer protection package and it is one that is worthy of our support. The Domenici amendment also makes certain long-overdue reforms to our Nation's outdated electricity laws. For example, the amendment would carefully extend open access requirements to transmission systems owned by all large transmission-owning utilities so that

larger, more seamless regional wholesale electricity markets can be created. It would establish new transmission pricing policies to help ensure that those benefitting most from new transmission investments are obligated to pay for them. It reforms PURPA while protecting existing investments, contracts, and expectations. Lastly, it repeals PUHCA, while ensuring that State and Federal regulators have access to the books, records and information needed to ensure informed regulatory action.

Mr. President, this is a good amendment. I urge all my colleagues to support it.

However, there are some improvements that should be incorporated. One such example would be Senator CANTWELL's amendment that places a broad prohibition on all manipulative practices in electricity markets.

I yield the remainder of my time.

The ACTING PRESIDENT pro tempore. Who yields time?

Ms. CANTWELL. The Senator from Oregon would like a few minutes. I am happy to yield to the Senator from Oregon 5 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Oregon is recognized.

Mr. WYDEN. Mr. President, I thank the Senator from Washington, and I also thank the Senator from New Mexico for his courtesy.

I rise in strong support of the Cantwell amendment. What we have seen in the Pacific Northwest with respect to the manipulation of our energy markets is that the position of the Federal Energy Regulatory Commission has simply been see no evil, hear no evil, and ignore evil.

The reason I have come to that conclusion is that when the Federal Energy Regulatory Commission Commissioners came to the Energy Committee in March to discuss with us the question of manipulation of the Pacific Northwest market, I read excerpts point by point from the Reliant Energy trading transcript to the Commissioners. I read to them pretty much like a bedtime story. Here is the portion of the transcript that I read to the Commissioners. It involves the Reliant manager.

He says:

How did it work today?

Reliant Trader: 129. We're talking about the power exchange.

Reliant Manager: Yeah. I saw that.

Reliant Trader: Then we traded up to 1.31 for the third quarter next year.

Reliant Manager: Sweet.

Reliant Trader. We even had a senior manager down here.

Listen, if you would, Mr. President, and colleagues to this.

The reliant trader said:

He just wanted us to know that everybody thought it was really exciting that we're gonna play some market power.

After reading this transcript, I asked the Commissioners, How can you reach the conclusion after what I have read

to you that overpriced contracts based on manipulation toward market prices should not be avoided or at least reformed? I pointed out it was clear just on the basis of that short excerpt that the traders were manipulating long-term prices when they were talking about the third quarter next year.

What is more, the Federal Energy Regulatory Commission staff's investigative report issued earlier this year found that there was a particularly significant correlation between spot prices and shorter 1- to 2-year contracts. Despite being caught in the act with a smoking transcript, despite having it read to them like a bedtime story, despite the Federal Energy Regulatory Commission's staff findings, the majority of the Federal Energy Regulatory Commission—specifically Commissioners Wood and Brownell—still cannot see the connection between these caught-in-the-act, smoking gun memos and transcripts and the higher energy prices my constituents are now paying because of the market manipulation detailed in these transcripts.

I am pleased to be able to have just a couple of moments here. But it seems to me if the Federal Energy Regulatory Commission is unwilling or unable to police long-term energy markets in cases like this where people in the Pacific Northwest are being ripped off in broad daylight, it is time for the Congress to step in. That is why the Cantwell amendment is so important.

I urge my colleagues to back the Cantwell amendment and outlaw the kind of manipulation that I have read to the Senate today and that I read to the Energy Committee. Unfortunately, the Federal Energy Regulatory Commission is unwilling or unable to address it.

I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DOMENICI. Mr. President, we will soon have a unanimous consent request that will set up another amendment of the same class to follow this afternoon immediately after the vote on the judge.

In the meantime, I have around 20 minutes to speak. I would like very much to be as short as I can. But first, let me say to fellow Senators that I am very proud of the electricity amendment, with 13 bipartisan cosponsors, which is pending. Does anybody think we would have worked on that for days on end and not have provisions in it that take care of the problems that Senator CANTWELL is talking about? Is it conceivable that I would come to the Senate floor with what we perceive to be a great American reform of an electricity system from top to bottom and leave out protection for the kind of people she is speaking of? I will answer my own question by saying that is impossible. It is impossible because we wouldn't let it happen. Second, it is impossible because it didn't happen.

Having said that, I understand full well—and I have explained privately to

the very distinguished Senator, Ms. CANTWELL. As I talked with her, I could just see how her very being was upset with what has happened to her constituents because of the pricing that went wild in the State of California for which she got the aftermath in her State. But it is not only her State and her constituents, it is a whole section of the country which, in a sense, got it in the neck because of California.

While I am at it—I intended to do this later in my remarks, but let me do it right now—there was a lot of talk about what happened to bring those prices to that outrageously wild system that ended up falling over on to her constituents. And the word “manipulation” was used and that even FERC said, in a report, manipulation caused it.

Let me suggest, the Senator from New Mexico has done everything he could to try to find out what the real experts say caused it, and none of them say it was manipulation that was at the heart of the problem of prices going outlandishly high on the west coast. As a matter of fact, whether you ask the Federal Reserve Board or whether you look at the FERC report, the root cause is found not to be—not to be—manipulation. The meltdown was a significant supply shortage and fatally flawed design statutes.

Let me repeat, the general consensus of those who have looked at it carefully say significant supply shortfall added to a fatally flawed design market and that blew up the California market and, thus, its surrounding States.

On March 26, 2003, FERC issued its “Final Report on Price Manipulation in Western Markets.” Senator CANTWELL believes the report proves there was manipulation. However, not everyone shares that view.

As a matter of fact, the Cambridge Energy Research Associates, CERA, is considered one of the top, if not the top, energy market analysts in the world. Daniel Yergin, the chairman of CERA, is the most respected expert in energy policy and the author of the “Prize,” the Pulitzer Award-winning book on the global oil market.

CERA noted that FERC ignored the natural gas and electricity supply shortages and assumed scarcity was attributed to manipulation. It was scarcity first, and then it was flawed design statutes which permitted the scarcity to go berserk.

Now, that is aside from the question.

Let's get back to the issue of the bill and whether we would bring before the body a bill that we would ask the entire Senate to support—that I am very hopeful, by the time we are finished, will get in excess of 65, 70 votes—that does not protect the citizens from what happened on the west coast.

Now, this amendment addresses the Federal Power Act and the Natural Gas Act in the following ways:

No. 1, it establishes an electronic information system at FERC to enhance market transparency.

No. 2, it increases criminal and civil penalties under the Federal Power Act and the Natural Gas Act.

No. 3, it enhances FERC's refund authority.

No. 4, it requires FERC to issue regulations establishing conditions under which utilities can charge market-based rates.

No. 5, it prohibits the filing of false information.

And, last, it prohibits round-trip trading.

Further, the so-called Domenici amendment—that is the master amendment we are operating under that I have asked parenthetically of myself: Would I bring it here without protecting for the future events that are being alluded to by the distinguished Senator who is worried about her State—that Domenici amendment enhances the role of the Commodity Futures Trading Commission to provide oversight over electricity and natural gas.

The Senate, in my humble opinion, should reject amendments—all of them—to the electricity title of the bill that would affect FERC's and the CFTC's flexibility to react and deal with bad actors and upset further the already beleaguered utility industry's ability to respond to a changing market.

Now, I do not want to take a lot of time because, frankly, I am not sure, when we go on forever, that anybody listens. But I want to tell you that even without the so-called Domenici Modernization Act, the markets are being forced to respond, because FERC is taking action in the form of initiatives to protect electricity consumers, increase market transparency, and strengthen the regulation of electricity markets at the wholesale level.

They have proposed to identify more clearly transactions and practices that would be prohibited under electricity sellers' market-based rate tariffs and gas sellers' blanket certificate authority. These new market behavior rules would prohibit market manipulation or attempts to manipulate the market through activities such as creating and relieving artificial congestion.

They have proposed to require electricity sellers to operate and schedule generating facilities in compliance with the rules and regulations of the relevant power market.

They have proposed to require sellers to provide complete, accurate, and factual information in all communications with FERC, RTOs, ISOs, market monitors, and other similar entities. They have proposed measures to assure the accuracy of electricity and natural gas price reporting.

They have established a new Office of Market Oversight and Investigations as part of a stepped-up enforcement and audit program.

And I could go on.

Clearly, they are enforcing the law. They are taking out after those who are causing this market to react other

than in a normal market way. And we will add to that authority in the bill that is before us which does not have to be amended.

The Commodity Futures Trading Commission has aggressively prosecuted fraud and manipulation in energy markets. They have committed 25 percent of their enforcement staff to conduct investigations into misconduct in energy markets.

CFTC's existing authority empowers it to prosecute fraud and manipulation. Under the authority of the Commodity Futures Trading Commission, they have filed civil action against Enron and a former Enron vice president for manipulation of prices in natural gas markets. They have filed civil action against Enron for operating an illegal futures exchange. They have filed civil action against El Paso Merchant for false reporting and have a \$20 million settlement. And they have filed civil action against Dynegy Marketing for false reporting and have a \$5 million settlement. They have filed civil action against Encana Trading for false reporting and Williams Trading for false reporting, both with a \$20 million settlement.

Criminal actions have been filed, and I have a complete list of those. Enron's former head of CA trading pled guilty to conspiracy.

We don't need further amendments beyond the Domenici amendment that is pending to be sure the constituents of the distinguished Senator from the State of Washington are protected. They are protected. All we do by adding more is making the market more difficult. We would accomplish little but perhaps to say to ourselves we have done much.

The Natural Gas Supply Association, the Interstate Natural Gas Association, and the American Gas Association have all endorsed the market manipulation provisions in this amendment we call the Domenici amendment. I believe it is right as it is. It need not be changed.

Mr. President, let me just generally talk about where we want to go. Soon we will have the unanimous consent request in writing.

I say to the Senator, maybe we can just recite it here since you and I know it.

The ACTING PRESIDENT pro tempore. The assistant majority leader.

Mr. REID. Will the Senator yield?

Mr. DOMENICI. Surely.

Mr. REID. Mr. President, the next amendment we will offer is an amendment of the Senator from Wisconsin dealing with the electricity section. He has agreed his time on it will take approximately a half hour. Senator FEINGOLD is usually quite concise. The problem is that if we lock in this time agreement, people coming and wishing to speak on other subjects would not be able to do so. We have no reason to think anybody is going to or not going to. We don't want to have those time constraints. We are going to offer the

next amendment. It would be the Feingold amendment.

Mr. DOMENICI. People might want to speak to which amendment? To the amendment you were referring to?

Mr. REID. Well, to be very direct to the Senator from New Mexico, as I want to be, the majority leader has told us we are going to vote on cloture tomorrow on the attorney general of Alabama, Mr. Pryor. We have had no opportunity to debate this. We will have a half hour tomorrow under the rules. We are going to have members of the Judiciary Committee come this afternoon and speak to the competency and the professionalism of the attorney general of Alabama to be a United States Federal judge. People are going to take some time doing that. When they will come, I don't know. But we wouldn't want them to be prevented from doing that because we are in a time agreement on the Feingold amendment.

Mr. DOMENICI. Could we agree where we are going? There is an amendment up shortly, is there not?

Mrs. FEINSTEIN. Reserving the right to object.

The ACTING PRESIDENT pro tempore. No unanimous consent has been propounded. The Senator from New Mexico controls the time.

Mr. DOMENICI. Mr. President, I have not propounded a unanimous consent request. I just wanted to know how much time is left to Senator CANTWELL.

The ACTING PRESIDENT pro tempore. The Senator from Washington controls 7 minutes and 20 seconds. The Senator from New Mexico controls 9½ minutes.

Mr. REID. If the Senator will yield for a question.

Mr. DOMENICI. Yes.

Mr. REID. The Senator from California is here. The Senator from Washington has 7 minutes left. She wants to close. We have no more time than 7 minutes. The Senator from California wishes to speak on this amendment. She can only do that if unanimous consent is given to allow her to speak for up to 15 minutes. Otherwise, she will not be able to speak on the amendment. She wants to. Is that a fair description?

Mrs. FEINSTEIN. It is a fair description. I have great respect for the chairman of our committee. However, he did not correctly present the California situation. I would like an opportunity to set the record straight.

Mr. REID. I ask unanimous consent that on the Cantwell amendment, the Senator from California be allowed to speak for 15 additional minutes and that, of course, the majority, if in fact they want 15 minutes, would have equal time.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. DOMENICI. Yes, there is objection.

The ACTING PRESIDENT pro tempore. Objection is heard.

Mr. DOMENICI. Mr. President, I don't want to object to the Senator from California speaking. I just want to remind the Senator and the Senate, this amendment has been on the floor 3 hours—not 3 minutes, not 30 minutes, 3 hours. We are supposed to vote, generally, when 3 hours is up. Three hours will be up in a few minutes. I would like to proceed and vote. I have a few minutes. I don't know that I need it. But I really don't think I am being unfair in suggesting to the Senator that perhaps, so we can vote on an amendment that has been pending for 3 hours, if you could take half the time you requested so we can proceed to vote, I would have no objection.

Mrs. FEINSTEIN. If I may respond, this is an amendment on market manipulation. You, Mr. Chairman, have just said there wasn't market manipulation.

Mr. DOMENICI. I have not.

Mrs. FEINSTEIN. I would like to present evidence specifically. I have 18 to 20 disks involving 3,000 pieces of paper which is evidence presented to FERC of market manipulation in the California market. This Senator has done a great service because those of us out west know what happened. What happened is so egregious as to give the senior Senator from California an opportunity to support the amendment of her colleague.

The ACTING PRESIDENT pro tempore. The Senator from New Mexico has the floor.

Mr. DOMENICI. I don't think it is fair for the Senator—I am going to give her time, but I don't think it is fair for her to give a speech this way. She knows she is going to get time, and she can just be patient like every other Senator, if you don't mind.

Mrs. FEINSTEIN. I have been patient.

Mr. DOMENICI. I thank you.

Might I say to the Senate, the Senator from New Mexico has responded to an amendment. Never once did I say there was no market manipulation. I don't intend that every time any of us gives a speech, that somebody come to the floor when there are time agreements and decide they would like to give a speech on something they heard.

I said there are studies that say market manipulation was not the principal reason for what happened. If the Senator would like to speak, I would ask her if she would speak for a little less time so we can proceed, since the time is up. I can object, and we will vote. And then you can speak after the vote.

Mr. CRAIG. Will the chairman yield?

Mr. DOMENICI. I am pleased to.

Mr. CRAIG. So you can sustain the goodwill of the rest of the colleagues because you are managing the bill, you should.

The ACTING PRESIDENT pro tempore. If the Senator will suspend. The Senators are reminded to address one another in the third person or through the Chair.

Mr. CRAIG. I simply say to the Senator that to sustain the goodwill that

he needs to, he will work the bill, but when there are time agreements of 3 hours, this Senator will object to adding more time.

Mr. DOMENICI. I wanted to ask the Senator if he wanted to object at this point. He is not going to object.

How much time did the Senator ask for?

Mrs. FEINSTEIN. I asked for 15 minutes.

Mr. DOMENICI. I wonder if you would take 10 minutes.

Mrs. FEINSTEIN. I will do my level best.

Mr. DOMENICI. All right, 10 minutes, so long as we understand. I ask unanimous consent that she have 10 minutes, after which time we will finish the time allowed and then we will vote on the pending amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from California is recognized for 10 minutes.

Mrs. FEINSTEIN. Mr. President, I thank the chairman of the committee.

I wanted to say a few words in support of what Senator CANTWELL is trying to do. Perhaps those of us in the West are more disconnected from the Beltway than I ever believed, but let me give you a startling fact which will demonstrate market manipulation. The total cost of electricity in California in 1999 was \$7 billion. It increased 400 percent in one year to \$27 billion the next year. There is no way supply and demand can be responsible for a 400 percent increase.

What we now know is that power generators, traders, and marketers manipulated the western energy markets, and the market abuse wasn't simply limited to Enron. Look at these schemes. There are more than we ever knew: Ricochet, Death Star, Get Shorty, Fat Boy, Nonfirm Export, Load Shift, Wheel Out, Black Widow, Red Congo, Cuddly Bear. This was not limited to Enron. It was a widespread series of schemes perpetuated by many companies that supplied and traded in the West. I deeply believe this.

The State of California, the California Attorney General's office, and the State's largest utilities compiled the 3,000-page report detailing the pervasiveness of fraud and manipulation in the western energy market in 2000. Then they couldn't present it to FERC. They had to go to a Ninth Circuit Court of Appeals to get the ability to conduct discovery and evidentiary hearings to be able to bring the allegations of fraud and manipulation to FERC. So the whole Federal system is stacked against allowing a State to make a presentation of fraud and manipulation.

This report concluded that energy companies intentionally withheld power from the western market, driving prices up and creating false shortages. For example, from August 30 to December 3, 2000, Dynegy shut down one of its units for repairs, yet repairs had already been done prior to August 30.

The report's conclusion: The plant was shut down to intentionally drive up prices.

Another example. Following an external tube leak, Merit held one of its plants offline for 2 extra days, from October 20 until October 22, 2000, denying the western energy market much needed power and driving prices up. The report also submitted evidence that suppliers bid higher after the California independent systems operator declared emergencies, knowing full well the State would need power and would be willing to pay any price to get it.

Further, we learned that suppliers submitted false load schedules to increase prices. One example of this bogus load is demonstrated in an internal PowerX memo, which documents that PowerX entered into a contract with the explicit purpose of overscheduling and underscheduling and for congestion manipulation.

Other games were played in the western energy market, including collusion among sellers, sharing of nonpublic generation outage information, and the manipulation of the nitrogen oxide emission market. Just look at one fact. One company, CMS Energy Corporation, has admitted conducting wash energy trades that artificially inflated its revenue by more than \$4.4 billion. These round trips accounted for 80 percent of that company's trading that year, in 2001. So 80 percent of the trading of a large company was bogus in that year. The market was rife with fraud and manipulation.

Senator CANTWELL's amendment attempts to strengthen the Federal Power Act, so that the fraudulent and manipulative behavior we witnessed in the western energy crisis does not go unpunished.

The problem is that FERC could not go back. FERC would not accept findings from California to document the fraud and manipulation. California, to this day, has not received \$1 of refund, despite settlements. So that is what is really going on out there, and that is a huge problem.

To have an Energy bill that doesn't adequately deal with fraud and manipulation is something none of us should vote for. I will tell you why. Under the present regulations, it can and will happen again. These companies will try to do it if they possibly can. Consumers should be protected from fraud and manipulation perpetrated by people who are only motivated by profit, which we know dominated the trading scenario in the western energy market. I can tell you terrible things traders said about shutting off power for the purpose of inflating the bottom line of their company. That is wrong and it should be dealt with.

The fact is that FERC has not dealt with it up to this point. So I very strongly support what Senator CANTWELL is trying to do. I hope the Senate will accept it because I think the energy title is weak. I hope at a later time to add natural gas to some of the

provisions that this bill achieves in terms of increasing penalties in the electricity market. Unfortunately, the bill does not harmonize penalties for the natural gas market, and there is ample evidence of fraud and manipulation as well in the national gas market, specifically with El Paso Natural Gas, and I hope to indicate that in an amendment I will do at a later time.

I have tried to truncate my remarks to cooperate with the chairman. I yield the floor.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. DOMENICI. Mr. President, I thank the Senator for getting her remarks down to 10 minutes. How much time does Senator CANTWELL have?

The ACTING PRESIDENT pro tempore. She has 7 minutes 20 seconds.

Mr. DOMENICI. Does she want to deliver her remarks?

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, how much time is available?

The ACTING PRESIDENT pro tempore. There are 7 minutes 20 seconds remaining. The Senator from New Mexico has 5 minutes.

Ms. CANTWELL. Does the Senator from New Mexico wish to complete his comments?

Mr. DOMENICI. I will wait for a while.

The ACTING PRESIDENT pro tempore. Who yields time?

Ms. CANTWELL. Mr. President, I appreciate the chairman of the committee giving time to the Senator from California so she could explain and respond to her views on this issue. I appreciate my colleagues from the West engaging in this debate. I appreciate the Senator from Idaho coming to the floor and reiterating to this body, yes, how ratepayers in Washington, Oregon, and Idaho got stiffed. That is the right word. We got stiffed. We got stiffed with paying a bill more exorbitant than ratepayers should have to pay.

The debate that has ensued in the last few minutes is whether the Domenici underlying amendment has enough protections in it to protect consumers or whether we need the Cantwell amendment. It is a clear and simple and plain statement that market manipulation should be outlawed in the Federal Power Act as not being just and reasonable.

I thank the Senator from Louisiana for her comments. She supports the underlying Domenici title, but she supports my amendment as well because she knows that kind of language can be helpful and can be specific.

Let me be clear. If anybody thinks that the Enron manipulation didn't have a profound and adverse impact on the marketplace and that this is all about poor management in California, I can assure you that is not the case. This is about whether this body is going to adopt tough standards against

market manipulation so there is no question by the public. So the public doesn't debate, if there was a shortage of supply or manipulation going on?

We know there was manipulation going on. We have proof of it. The FERC itself said:

Enron and its affiliates intentionally engaged in a variety of market manipulation schemes that had profound, adverse impact on market outcome.

There it is. The FERC said itself that market manipulation had profound, adverse impact on the market. So we know for a fact that market manipulation had an impact in California, it had an impact in Washington, it had an impact in Oregon, and it had an impact in Idaho. The question is whether this body is going to do enough to protect consumers in the future.

So the chairman of the committee—I appreciate his earnest time on the electricity title, and I appreciate the fact that he wants to have some protection in this legislation. But these protections don't go far enough.

Let me explain why. There is transparency language in the underlying Domenici title. Some of those powers are already in place with FERC. They are not doing us any good because reporting to FERC is one thing; reporting to the California ISO, the independent systems operator, who basically was the cog by which all the manipulations took place, you are not under any kind of threat or penalty for reporting falsified information to them. That is where the manipulation took place, so the Domenici title does not cover that situation.

There is a lot of talk in the bill about the Commodity Futures Trading Commission, and there is a section in the bill that tries to beef up that language. That is a noble attempt. I much prefer the Feinstein amendment which has very specific language about closing a loophole.

I have a letter from the National American Securities Administrators Association. They basically say the Domenici language is flawed. These are Federal regulators who are supposed to regulate this policy. They say the Domenici language is flawed because it will prohibit any Federal or State agency from obtaining information directly from a board of trade or exchange or market involving commodities, and that State and Federal agencies will be impeded from investigating violations of these wide range of commodities.

I ask unanimous consent that this letter from the National American Securities Administrators Association, about how the Domenici language is trying to correct some of the problems is actually causing a new problem and is not going to protect people, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NORTH AMERICAN SECURITIES
ADMINISTRATION ASSOCIATION, INC.,
Washington, DC, July 29, 2003.

Hon PETE V. DOMENICI,
Chairman, Committee on Energy & Natural Resources, Washington, DC.

Hon. JEFF BINGAMAN,
Ranking Minority Member, Committee on Energy & Natural Resources, Washington, DC.
Re: S. 14, the Energy Policy Act of 2003.

DEAR CHAIRMAN DOMENICI AND RANKING MEMBER BINGAMAN: The North American Securities Administrators Association (NASAA) is writing to express its concern over proposed language in the Domenici substitute to Title XI, (the electricity title) of S. 14, the Energy Policy Act of 2003.

Proposed Sections 1171 and 1173 would require that "any request by any Federal, State or foreign government, department, agency or political subdivision" to a "board to trade, exchange, or market" involving transactions in commodities "within the exclusive jurisdiction" of the Commodity Futures Trading Commission (CFTC) "shall be directed" to the CFTC.

This prohibition on federal and state information gathering directly from a board of trade, exchange or market would place unnecessary burdens on state securities regulators when they investigate violations of laws regulating foreign exchange products, energy products and financial instruments. Over the years, state securities regulators have handled many of the foreign exchange cases under authority contained in the Model Code and state securities laws.

This language would prohibit state securities regulators from directly seeking information from a CFTC regulated entity. State securities regulators do not have regulatory jurisdiction over a CFTC regulated entity, but we must retain our authority to subpoena documents from all relevant sources as part of our enforcement cases. For example, a registered representative of a securities firm could illegally take investor funds and trade in commodities, and our members might have to subpoena a futures exchange for trading records or other information.

The CFTC and the states have a history of coordinating efforts and working successfully toward our mutual goal of protecting investors by recognizing potentially fraudulent activity and bringing it to the attention of the public. However, mandating that regulators go through the CFTC for information could be burdensome, time-consuming and inhibit our ability to investigate wrongdoing in a timely and efficient manner. It may also place the CFTC in a difficult position of deciding whether to send a state's subpoena to one of the exchanges it regulates.

With the fallout from Enron and a variety of financial scandals still in the news, now is the time to strengthen, not weaken, our complementary system of state and federal securities regulation. There seems to be no justification for limiting the ability of state securities regulators to gather information directly from a futures exchange.

We urge you to strike Sections 1171 and 1173 from the Domenici substitute. Please do not hesitate to contact me if I may be of further assistance to you.

Sincerely,

CHRISTINE A. BRUENN,
NASAA President,
Maine Securities Administrator.

Ms. CANTWELL. Mr. President, the bottom line is, in this amendment, while round-trip trading is covered and some, I am sure, well-intentioned language on reporting and falsifying information to FERC, it does not cover a myriad of other manipulative schemes

that have been deployed and used by Enron.

Fat Boy is not outlined under the Domenici language. Ricochet is not outlined under the Domenici language. Death Star is not outlined under the Domenici language. Load Shift, Get Shorty, and Wheel Out are not outlined under the Domenici language.

I understand the chairman wants to see that the manipulation stops. In this Senator's opinion, that manipulation will stop when this body stands up and says to the American people with simple language in the Power Act: Manipulated prices are not just, they are not reasonable, and anyone who deploys them are not doing so in the public interest, and we cannot give them market-based rates.

If this body will say this, then any future debate about natural gas prices will not be about whether some company manipulated them, it will be about the real issues of the supply and demand.

Let's give the consumers confidence that market manipulation is prohibited in Federal law and that this body does not condone Enron's activities but is going to be aggressive in outlawing them.

Mr. President, how much time do I have?

The ACTING PRESIDENT pro tempore. The Senator's time has expired.

The Senator from New Mexico.

Mr. DOMENICI. Mr. President, the bill before us does away with the Enron loophole, there is no question about it. If I came from California or Washington, I would come to the floor of the Senate and offer an amendment that was very precise and specific and talked about the problems of the people of the west coast. That is what the Senator is doing. But merely talking about them does not mean that the bill before us does not protect her people. The truth is, it does.

The Domenici amendment protects consumers in the States of Washington, California, and others who were victimized by the Enron scandal, and many others, and market regulations in California that were doomed from the outset to cause the failures that occurred. To regulate at one level and deregulate at the other level is clearly to invite exactly what happened, and then the spillover falls onto the adjoining States, including that of the distinguished Senator from Washington, Ms. CANTWELL.

I commend the Senator from Washington for her genuine and abiding concern for her people. I commend the Senator from California for her studious and lengthy involvement in attempting to ascertain and articulate the problems. But neither of those qualities require serious amendment to this bill. They require just what is happening: that the Senators representing those problems speak to the issues. And speak they have—3 hours and 15 or 20 or 30 minutes on this subject—and, I assume, before we are finished on collateral issues even more.

I could take out my preparatory books, where I spent hours talking to everyone of every ilk in every type of industrial input and involvement as we put this bill together, and read the language showing that what happened before will not happen again.

I could tell my colleagues what has happened is being broken up by those in the criminal justice structure of our Government, and those involved with the civil part are filing their lawsuits. Neither of the States involved are having the same problem because there are protections being carried out, and there will be more when this bill is adopted, without adding any more burdens, additions, or specificity to the bill.

It is with great regret that I suggest we keep—since it was worked out so delicately with so many different units, institutions, and groups—that we preserve the delicacy of this bill. The Senator who proposed this knows that the cooperatives that are very worried have spoken to the fact that they do not need any more protection. They have told her that. They have told her office that. And there are more associations beyond them that say their fears are alleviated by this bill.

I yield the floor, and we will proceed.

The ACTING PRESIDENT pro tempore. All time has expired.

The question is on agreeing to the amendment.

Ms. CANTWELL. Mr. President, I ask unanimous consent that Senator HARKIN and Senator ROCKEFELLER be added as cosponsors to the amendment.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. REID. I ask for the yeas and nays.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The bill clerk called the roll.

Mr. REID. I announce that the Senator from Massachusetts (Mr. KENNEDY) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea."

The ACTING PRESIDENT pro tempore. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 48, nays 50, as follows:

[Rollcall Vote No. 311 Leg.]

YEAS—48

Akaka	Conrad	Gregg
Baucus	Corzine	Harkin
Bayh	Daschle	Hollings
Biden	Dayton	Inouye
Bingaman	Dodd	Jeffords
Boxer	Dorgan	Johnson
Byrd	Durbin	Kohl
Cantwell	Edwards	Landrieu
Carper	Feingold	Lautenberg
Clinton	Feinstein	Leahy
Collins	Graham (FL)	Levin

Lieberman
Lincoln
Mikulski
Murray
Nelson (FL)

Pryor
Reed
Reid
Rockefeller
Sarbanes

Schumer
Smith
Specter
Stabenow
Wyden

NAYS—50

Alexander
Allard
Allen
Bennett
Bond
Breaux
Brownback
Bunning
Burns
Campbell
Chafee
Chambliss
Cochran
Coleman
Cornyn
Craig
Crapo

DeWine
Dole
Domenici
Ensign
Enzi
Fitzgerald
Frist
Graham (SC)
Grassley
Hagel
Hatch
Hutchison
Inhofe
Kyl
Lott
Lugar
McCain

McConnell
Miller
Murkowski
Nelson (NE)
Nickles
Roberts
Santorum
Sessions
Shelby
Snowe
Stevens
Sununu
Talent
Thomas
Voinovich
Warner

NOT VOTING—2

Kennedy

Kerry

The amendment (No. 1419) was rejected.

Mr. DOMENICI. Mr. President, I move to reconsider the vote.

Mr. CRAIG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to 60 minutes of debate with 30 minutes under the control of the Senator from Vermont, Mr. LEAHY, and 30 minutes under the control of the Senator from Kentucky, Mr. MCCONNELL.

The assistant minority leader.

The ACTING PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the time under my control be as in morning business.

Mr. REID. Reserving the right to object.

The ACTING PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. It is my understanding the Senator from Kentucky is going to use the half hour under the rule now available before the Senate on the Estrada cloture. He is going to use his time as in morning business; is that correct?

The ACTING PRESIDENT pro tempore. That is the request. The Senator from Kentucky.

Mr. MCCONNELL. I did not hear the assistant Democratic leader.

Mr. REID. I just said the half hour that you are entitled to under the Estrada time for cloture, you are going to use that as in morning business?

Mr. MCCONNELL. I would say, Mr. President, that is correct.

The ACTING PRESIDENT pro tempore. Without objection, the Senator from Kentucky controls the time.

MEASURE READ THE FIRST TIME—S. 1490

Mr. MCCONNELL. Mr. President, I send a bill to the desk and ask for its first reading.